UNITED NATIONS

CCPR

International Covenant on Civil and Political Rights

Distr.
GENERAL

CCPR/C/SR.1495
14 January 1998

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Fifty-sixth session

SUMMARY RECORD OF THE 1495th MEETING

Held at Headquarters, New York,
on Monday, 1 April 1996, at 3 p.m.

Chairman: Mr. AGUILAR

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Initial report of Nigeria (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, room DC2-750, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

96-80445 (E)

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Initial report of Nigeria (continued) (CCPR/C/42/Add.2)

Right to life, liberty and security of the person and right to a fair trial (articles 6, 7, 9 and 14 of the Covenant) (section I of the list of issues) (continued)

1. At the invitation of the Chairman, Mr. Yadudu and Mr. Otuyelu (Nigeria) took places at the Committee table.

2. Mr. FRANCIS asked whether decrees broadcast by radio or television also had to be published in the Official Gazette before they could take effect in law.

3. He asked the representatives of Nigeria when military rule could be expected to end and invited their comments on recent reports from Amnesty International of beatings, torture and ill treatment of prisoners, who were held incommunicado under extremely harsh conditions and given very little food.

4. Mr. OTUYELU (Nigeria) thanked the Committee for the professionalism with which it had considered the initial report of Nigeria and noted that some of the information the Committee had received regarding the situation in his country was inaccurate, because the sources were not always objective. He said he and Mr. Yadudu would make every attempt to provide the Committee with accurate information.

5. Mr. YADUDU (Nigeria) thanked the members of the Committee for their candid observations regarding violations of the Covenant in Nigeria and said that he was anxious to hear any suggestions for improving the implementation of its provisions in his country.

6. He disputed the allegations of torture of the Ogoni people. While there had been instances of torture, proceedings were public and recorded and he had heard no reports of prisoners being held incommunicado. He would verify the Committee's allegation that members of the Tribunal and the prosecution lived in the same house.

7. With regard to the jurisdiction of courts, he acknowledged the existence of "ouster clauses" in decrees, but said that they were subject to modification or appeal. When the Guardian newspaper was proscribed by decree in August 1994, the Guardian attempted to appeal the ban before a Federal High Court, but the Court claimed that it no longer had jurisdiction. The Guardian then appealed to a higher court, which overturned the decision of the lower court. Thus, even though decrees contained "ouster clauses", the courts were still required to hear appeals. Furthermore, all the newspapers which had been proscribed in 1994 were currently in circulation throughout Nigeria. A number of decrees to which the Committee had referred predated the country's accession to the Covenant. Decrees promulgated between 1980 and 1987 which remained on the statute books, would be subject to review in the near future.

8. The Committee had raised the issue of the fairness of Ken Saro-Wiwa's trial. It was true that one member of the Civil Disturbances (Special) Tribunal was a member of the military, that the Tribunal had been appointed by the Executive and that there was no right of appeal to the Tribunal's ruling. Nonetheless the trial had been conducted within the limits of domestic law in Nigeria. Two of three members of the Tribunal were judicial officers. Furthermore, the dangers of having a tribunal that could pass a death sentence against which there was no appeal had been well recognized by public opinion in Nigeria.

9. He asked Lord Colville to identify the community alluded to in his question about communal disturbances. The Civil Disturbances (Special) Tribunal had been created in 1987 in the aftermath of communal strife which had led to massive destruction and had threatened the peaceful existence of the communities themselves. It was found that the regular courts did not handle such cases adequately and a decision was made to establish the Civil Disturbances (Special) Tribunal Act. The selection of the cases brought before the regular courts and those that were heard by the Tribunal was not made arbitrarily. Whenever there was a massive civil disturbance between or within ethnic or religious groups, a special investigation panel was established. A decision to establish a Civil Disturbance (Special) Tribunal was then made on the basis of a report on the situation submitted by the panel.

10. In reply to an inquiry regarding the fate of the other suspects who were being tried in the Ogoni 19 trial, he informed the Committee that the trial had been suspended following a court ruling. It was not yet known whether the trial would be resumed before the Tribunal or in the regular courts.

11. Chief Abiola had been arraigned on charges of treason on 23 June 1995 before a Federal High Court after declaring himself the winner of an inconclusive presidential election. His oral request for bail was denied by a Federal High Court judge, who ordered him to apply in the appropriate manner i.e., by entering a motion. Abiola's lawyer appealed the order of the High Court judge to the Court of Appeal. Concurrently, Abiola charged that the judge appointed to hear his case was biased and the judge then withdrew from the case. A new judge was assigned, but before he could proceed with the case, he had to decide on the matters which were being appealed, namely, the issue of bail and whether Abuja was the proper venue in which to try Chief Abiola. Abiola's lawyers then sued the second judge on the ground that he was biased because he belonged to a party which was in opposition to Abiola. As a result, the second judge was withdrawn from the case. In the meantime, the Court of Appeals had granted Abiola bail, but the State appealed that decision, requesting a stay of execution of judgment. His lawyers then appealed to the Supreme Court, but just as the Supreme Court was about to hear Abiola's appeal for bail, his lawyers alleged that seven of the nine Supreme Court justices were biased, thereby impugning their character, including that of the Chief Justice. As a result, those judges had withdrawn from the case. As the situation now stood, Abiola was being detained by court order and had not been granted bail owing to the actions of his lawyers, and not those of the Government.

12. To the best of his knowledge, none of the three people who were allegedly being detained - Mr. Falomé, Mr. Le (Chief Abiola's lawyer) and Mr. Eno - were still in custody. He challenged the allegations of the extrajudicial

executions; notwithstanding Amnesty International's charges, no newspaper in Nigeria had ever mentioned such executions and, in the case of Ken Saro-Wiwa, the Government did not consider that execution to have been extrajudicial.

13. The military had assumed power in view of the special circumstances prevailing in the country and was committed to restoring democracy by October 1998. It had already taken many of the steps it had promised to prepare for a return to democracy: Committees of Reconciliation had been created, the Electoral Commission had recently overseen municipal elections and, on 1 April, political parties would begin to register for elections to be held at the end of 1996. In 1998 the reins of power would be handed over to democratically elected officials.

14. Significant steps had also been taken in the area of human rights. An independent National Human Rights Commission had been created composed of representatives from independent non-governmental organizations, journalists, and individual citizens, to assist in implementing the human rights provisions of the Covenant and other international instruments. An independent fact-finding mission sponsored by and reporting to the Secretary-General was currently in Nigeria and he hoped that its report would help clear up some misunderstandings about the human rights situation in Nigeria.

15. Mr. LALLAH expressed great concern about the criteria for deciding which matters would be tried by special courts, and who would make those decisions. If the "ouster clauses" removed any right of appeal, was that not a violation of guarantees of the independence of the judiciary as provided for in the Covenant? It could hardly be deemed independent when it was chaired by a member of the military whose duty was to carry out the orders of his superior.

16. Mr. MAVROMMATIS had serious reservations about the civil disturbances tribunals. The human rights situation under the current regime appeared to have worsened since the special tribunals dealing with cases of treason were strictly military organs that met in closed session and did not allow the accused legal counsel. Admittedly, the current regime had inherited those institutions from a time when the Covenant did not yet exist, but the President could at least require that they respect the provisions of the Covenant governing the right of appeal, secrecy, calling of witnesses, and legal counsel. In the Abiola situation, it was difficult to understand how the Government could reject recourse to Covenant provisions which could resolve the deadlock.

17. Mr. KLEIN wondered how the courts dealt with decrees which contained provisions like the "ouster clauses" allowing for no appeal as prescribed in the normal judicial process. Could individuals appeal against such decrees?

18. Ms. EVATT wondered how the special tribunal could be reconciled with articles 6 and 14 of the Covenant, when there was no appeal to an independent court and no provision for commutation of sentence or pardon.

19. The delegation had not responded to a number of other concerns. The accused had been kept incommunicado for nine months before charges were laid, had had only restricted access to lawyers and in the long run had not had lawyers of their choice. In the case of The Guardian newspaper, was the Court of Appeal decision based on the validity of the decree itself or simply on its

application? Referring to the question of torture as mentioned in question 1 (c) of the list of issues and paragraph 48 of the report, he pointed out that since torture was a criminal offence, it would be useful to know what investigations of allegations and what prosecutions of charges had been carried out in the past two or three years.

20. Mr. BUERGENTHAL said that he had used the term 'extrajudicial executions' because the death sentences had been imposed by a tribunal conceived by the Executive for a specific purpose, one military member of which was subject to the orders of the military regime. There was no right to appeal its judgments and there were other violations of the Covenant as well. Those were not the characteristics of a tribunal as defined in the Covenant, and a death sentence carried out by decision of such a tribunal was necessarily an extrajudicial execution.

21. Mr. BAN wondered whether, in the case of decrees containing ouster clauses, the ordinary courts had the right to review the jurisdiction of the military courts and whether the accused had the right to request such a review. If so, was there some special procedure and was the court bound to give an answer?

22. Mr. YADUDU replied that torture was illegal, law enforcement authorities had been censured in the past and evidence obtained by force or inducement was inadmissible. With regard to rights of appeal, the courts could review the legality of decrees containing ouster clauses, and individuals could petition the courts. Like any common law jurisdiction, the judiciary had the power to review legislation, including such decrees. In the case of The Guardian he noted that the newspaper had been closed a few days before the decree was actually issued. The decree was backdated, raising the question of its legality, but the trial court had ruled that it had no jurisdiction. Meanwhile, however, the newspaper had obtained an injunction allowing it to reopen, before the decree was issued, and the appellate court later ruled that the decree could not nullify the court order. Thus it was clear that the courts had the right to review the decrees, although courts could differ in exercising that right.

23. As for the question of commutation of sentences, he noted that the tribunal could recommend commutation, although there was no provision for appeal, and in any case none of the accused had asked for commutation. In response to Mr. Buergenthal, he stressed that the tribunal had acted in accordance with Nigerian domestic law, and therefore its death sentence could not be considered to have been an extrajudiciary execution.

24. Referring to questions about the Abiola trial, and the apparently deadlocked proceedings, he said that since Mr. Abiola's lawyers were exhausting every remedy available under the law, the proceedings had ground to a halt and Mr. Abiola's execution had been stayed pending the appeal to the Supreme Court. The Government could not intervene in the judicial process without being accused of bias.

25. The tribunals dealing with treasonable felonies had been created in reaction to a coup attempt in the past and the present regime had extended their jurisdiction to cover civilians involved in treasonable felonies. The special civil disturbances tribunals, of which there had been three, including the tribunal for the Ogoni case, had been created for the purpose of responding to

severe communal disturbances or intra-ethnic strife. After a decision by an investigative panel formed by the Attorney-General to recommend that the President constitute a civil disturbances tribunal, a case was brought before it.

26. Mr. BHAGWATI said that while he appreciated the candour with which the delegation of Nigeria had addressed the Committee's questions, a number of reservations about Nigeria's human rights record persisted.

27. His predominant concern was that the Constitution (Suspension and Modification) Decree No. 107 of 1993 relegated the 1979 Constitution to a subordinate position: the Head of State could override the Constitution, including the fundamental rights enshrined therein, merely by issuing a decree in violation of article 2 of the Covenant. Moreover, the State Security Detention of Persons Decree of 1984 provided for the indefinite detention incommunicado without charge or trial of persons deemed to threaten the security of the State. In that connection, it would be useful to know who had the authority to designate an individual as a security threat. The delegation had maintained that the Decree was inherited from the previous military regime, but instead of repealing it, it had been strengthened by the October 1994 amendment removing the right of habeas corpus in clear violation of article 9, paragraphs 1 and 4 of the Covenant.

28. In connection with the Civil Disturbances (Special) Tribunal Act, under which Ken Saro-Wiwa was tried and convicted, he would welcome more information about the criteria applied to the appointment of members of those tribunals and, more particularly, about whether the Chief Justice was consulted. He also found it difficult to accept the explanation that the unsatisfactory performance of the ordinary courts created the need for special courts. The so-called "ouster clauses" were being used to preclude the possibility of judicial review and appeal. Disturbing reports had also been received indicating that, pursuant to decisions of the Robbery and Firearms Special Provisions Tribunals, over 200 people had been executed since November 1993.

29. Furthermore, there was no right of appeal against the decisions of those tribunals, again in open violation of article 14. The Treason and Other Offences Special Miliary Tribunal Act of 1986 gave the military wide powers to bring persons to trial for "rebellion" - even a peaceful protest could be so designated. Those tribunals were not bound to follow civil procedures, there was no possibility of appeal, the trials took place in secret and defendants had no access to counsel of their own choice.

30. Arbitrary rule by decree had been further consolidated by the enactment of the Federal Military Government Supremacy and Enforcement of Powers Act of 1994, stripping the courts of jurisdiction to challenge Government actions, a clear violation of article 2, paragraph 3, of the Covenant.

31. He was also concerned about the mass public executions which had taken place in July 1995 in violation of article 7 of the Covenant and reports of torture which had been corroborated by several independent sources.

32. Mr. PRADO VALLEJO said that he remained unconvinced that the provisions of the Covenant had been taken into consideration and that the rights it

established were being protected in the internal legislation of Nigeria. His main concern was the practice of legislation by decree, conferring broad powers on the head of State to regulate the daily life of the country. He wondered what treasures were planned in order to bring Nigerian law into harmony with article 2 of the Covenant. The special courts set up by decree of the head of State did not meet the requirements of competence, independence and impartiality under article 14. Neither the executive nor the legislative branch should interfere with the courts, and he inquired how that open violation of the Covenant would be remedied. Moreover, article 14 stipulated that trials should be held in public, which did not seem to be the rule in Nigeria.

33. It was not enough to say that, simply because reports of extrajudicial executions had not been published in the press, they had not taken place. Furthermore, three newspapers which had criticized the Government had been closed down and a number of journalists were currently in detention, in violation of the right of freedom of expression.

34. At the next session, he would welcome more information from the delegation of Nigeria about the status of habeas corpus in Nigerian law, the Government's compliance with the article 14 of the Covenant, and its plans for the investigation of allegations of torture.

35. Mr. POCAR said that he saw serious discrepancies between the Nigerian legal system and the Covenant, especially in the area of the administration of justice. If the administration of justice failed, so would guarantees of fundamental human rights. The Government had an obligation to investigate allegations of human rights violations.

36. He shared the view of Mr. Buergenthal with regard to the characterization of certain killings as extrajudicial executions. In United Nations human rights terminology, summary, arbitrary or extrajudicial were equivalent terms when qualifying executions.

37. He was also concerned by the Civil Disturbances (Special) Tribunals. He strongly recommended that the Government should immediately repeal the decree establishing them. The practice of appointing special tribunals on a case-by-case basis was unacceptable, and it was essential to eliminate them if the rule of law was to be instituted in Nigeria.

38. Mr. MAVROMMATIS said that it was unfortunate that Nigeria had not taken steps, before ratifying the Covenant, to ensure that its domestic legal order was consistent with the Covenant's provisions. He was particularly concerned that persons charged with offences such as robbery and bank fraud could be tried before special tribunals instead of in the ordinary courts. Moreover, there was no provision for the review of sentences imposed by special and military tribunals and courts.

39. Another area of grave concern was the public execution of condemned persons, a practice which he considered barbaric. For its part, death by hanging was a violation of article 7 of the Covenant. While he personally opposed the death penalty, lethal injection was perhaps the most humane way to carry out that sentence in States in which it had not yet been abolished. There were also disturbing allegations of the torture of detainees. He wondered

whether those reports had been investigated and what, if any, action had been taken.

40. Mr. KLEIN said that he hoped that the Nigerian delegation's dialogue with the Committee would help to restore dignity and human rights to the people of that country. Nigeria was an influential country in Africa and the world and it should be mindful of the example it set for other countries in the field of human rights. There were serious defects in its domestic legal order which, in many respects, was incompatible with the provisions of the Covenant.

41. He had not been convinced by the explanations offered by the delegation. It was absolutely essential to strengthen the independence of the judiciary and to repeal the decrees which governed so many aspects of life in Nigeria. While the Committee was forced to rely on third-party sources for information on the situation in the country, some of those sources, such as Amnesty International, were of proven reliability. In any event, the delegation had not attempted to refute the many reports of human rights abuses which the Committee had brought to its attention. The fact of the matter was that Nigeria was currently run by a military Government which ruled by decree and with the aid of special tribunals. A normal situation of democracy clearly did not exist and serious human rights abuses occurred as would be the case in any society in which the rule of law did not prevail.

42. Efforts to remedy the current situation must begin with the restoration of the independence of the judiciary. There were encouraging signs that the Nigerian Government was mindful of the international community's concerns and was prepared to take steps to address them. For its part, the Committee would do everything possible to assist in those efforts.

43. Ms. EVATT said that the report (CCPR/C/92/Add.1) failed to offer an adequate explanation of the framework of power and law in Nigeria. The system in force was clearly incompatible with the rule of law. There was no concept of justice in both its procedural and substantive aspects, and the power wielded by the military was not subject to review. The special and military tribunals as well as the courts simply did not meet the requirements of the rule of law. There was no equality before the law. Persons were detained incommunicado without being charged. The notion of presumption of innocence was disregarded and the right of appeal denied. The reality of the situation on the ground, together with the arbitrary deprivation of life and the numerous allegations of torture, made mockery of the claim in paragraph 109 of the report that Nigerian tribunals acted in conformity with democratic norms.

44. Action to remedy the situation was urgently needed not only in the interests of the victims and the perpetrators of human rights abuses but in order to validate the current regime.

45. Mr. LALLAH noted that Nigerians had lived under democratic regimes for relatively few of the more than 35 years of the country's independence. The ratification of the Covenant in 1993 had marked the start of a new era for Nigeria. Unfortunately, the information contained in the initial report was quite depressing. The President of Nigeria, it was reported, had the authority to suspend by decree not only the national Constitution but also other international instruments to which Nigeria had acceded and which were legally

enforceable in the country. That provision was clearly a violation of article 4 of the Covenant.

46. There were many unanswered questions about how the special tribunals were constituted and whether they operated in a manner consistent with the standards laid down in article 14 of the Covenant. He had grave concerns about the arbitrariness of both the procedural and substantive aspects of the judicial process and wondered how fair that process could be, in reality, if the judges were themselves military officers.

47. Mr. BRUNI CELLI said that Nigeria's size, population and resources imposed special obligations on its Government in the field of human rights. Indeed, its formal ratification of the Covenant not only enhanced its prestige but also increased its obligations. He hoped that the dialogue with the Committee would help it to better fulfil those obligations.

48. It was a strange irony that the military Government had adopted its decrees and established its special and military tribunals at about the same time as it had ratified the Covenant. Indeed, the death sentences handed down by those courts had been commuted only because of the vigorous protests of the international community.

49. Despite the denials of the Nigerian delegation, there were reliable reports of the torture of detainees. Indeed, the practice of detention incommunicado and ill-treatment of prisoners created the conditions under which torture was likely to take place. It would be interesting to know what remedies were available to Nigerians seeking redress for human rights abuses and whether complaints were investigated and the perpetrators punished.

50. Mr. ANDO said that it was distressing to learn that the executive in Nigeria could override by decree both the Constitution and the laws promulgated by the national parliament in situations other than those provided for in article 4 of the Covenant. While the legacy of colonialism partly explained some of the problems currently faced by Nigeria, it by no means exempted that country from complying with the international obligations which it had voluntarily assumed. Indeed, with hard work and political will, it was possible for Nigeria to demonstrate to States with similar backgrounds how those problems could be overcome and human rights safeguarded.

51. Mr. BÁN said that, by arguing that there were no contradictions between the executive decrees and the Constitution, the Nigerian delegation had shown that it still did not appreciate the overriding importance of consistency between the domestic legal order and the provisions of the Covenant. It urgently needed to undertake a comprehensive study on that subject.

52. Mrs. CHANET said that the Nigerian delegation had freely admitted that the country was being run by a military Government, which had suspended the Constitution and ruled by decree. The suspension of the Constitution, however, was an internal matter which in no way exempted the State from its obligation to comply with the provisions of the Covenant.

53. Article 4 of the Covenant set out precisely the conditions under which States might derogate from their obligations under the Covenant in time of

public emergency. She noted, however, that no derogation from certain articles, including articles 6 and 15, could be made under that provision. Any State Party to the Covenant availing itself of the right of derogation was required, moreover, to immediately inform the Secretary-General of the United Nations of the provisions from which it had derogated and of the reasons for doing so. In those circumstances, therefore, the current judicial system of Nigeria, including its special tribunals, was inconsistent with the provisions of the Covenant.

54. Mr. YADUDU (Nigeria) said that his delegation had benefited greatly from its dialogue with the Committee and had taken due note of the latter's concerns. He deeply regretted, however, the statement contained in Press Release No. H/CT/455 dated 20 March 1996 that "many Committee members were concerned that the (Nigerian) delegation would seek to 'filibuster' to avoid answering the questions that had led to the Committee's November decision". That statement was most unhelpful, since it was the first time that Nigeria was being asked to submit an initial report. If the Committee could resort to such strong language to seek to persuade Nigeria to submit its initial report, he wondered what drastic measures it contemplated taking to persuade other States Parties which had refused to submit their reports, despite numerous reminders.

55. The Government of Nigeria would cooperate fully in implementing any recommendations which the Committee might wish to make. For its part, however, the Committee should avoid any precipitate decisions or recommendations on the report just presented, given that the Secretary-General was also seized of the matter and had offered to send a fact-finding mission to Nigeria to investigate the Ogoni issue. It might therefore be advisable for the Committee to await the findings of that mission before taking any action.

56. The CHAIRMAN said that he wished to make it clear that press releases were not official documents of the Human Rights Committee and that the views expressed therein did not represent the Committee's position on any issue. He wished to state further that even if any member of the Committee had expressed views like those referred to by the Nigerian delegation, those views did not represent the official position of the Committee.

57. The Committee looked forward to hearing the Nigerian Government's replies to the questions posed in section II of the list of issues at its fifty-seventh session in July 1996.

The meeting rose at 6.10 p.m.